IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Civil Writ Petition No.6945 of 2005

Indirabai Narayan Biwalkar & ors. Petitioners

Vs.

M/s.Mohini Rsorts Pvt.Ltd. & ors. Respondents

Mr.A.P.Paralikar for petitioners.

Mr.Madhav Jamdar for Resp.Nos.1 and 2.

CORAM: B.H.MARLAPALLE,J.

June 26, 2006.

P.C.

. Heard Mr.Parlikar, the learned counsel for the petitioners who are the plaintiffs in Regular Civil Suit No.1403 of 1985, and Mr.Jamdar, the learned counsel for the respondent nos.1 and 2.

. In the said suit the respondent no.2 in his capacity as the Director of the respondent no.1-company filed an application at Exhibit 60 under Order I Rule 10 of CPC on or about 18th September 2000 and the same was opposed by the plaintiffs and it came to be rejected by the learned Judge of the

trial Court on 14/12/2000. This order was carried in Misc. Civil Appeal No.29 of 2002 and obviously belatedly and the learned 7th Ad-hoc Addl. District Judge at Pune has allowed the appeal overruling the objection that the appeal was not maintainable and the application filed at Exhibit 60 has been also allowed by the impugned order dated 12/10/2004.

. It is true that consequent to the impugned order the present respondent nos.1 and 2 are already added as defendants in Regular Civil Suit No.1403 of 1985 and Written Statement has been filed by Respondent no.2 but the fact remains that from the order passed in an application filed under Order I Rule 2(2) of CPC, no appeal is maintainable and, therefore, the impugned order could be said to be an order without jurisdiction.

. However, the applicants who filed application at Exhibit 60 claimed that entire suit property was purchased by the company by registered sale deed dated 7/2/1991 i.e. during the pendency of the suit and it was, therefore, a necessary party. The trial Court ought to have allowed the application keeping in mind the sale transaction though the application

was filed belatedly and in any case the suit was still pending when the said application was filed. In fact it would be advantageous to the plaintiffs that the subsequent purchasers are impleaded as defendants right before the trial Court so as to avoid any further complications in getting the decree executed. The added defendant has also taken steps to contest the same and, therefore, at this stage no prejudice is likely to be caused to the petitioners-plaintiffs if the application at Exhibit 60 is allowed. However, it must be noted that the applicant did not approach the lower appellate Court in time against the order dated 14/12/2000 by filling Misc. Civil Appeal No.29 of 2002. It would be, therefore, appropriate that the said applicant-company is saddled with costs.

. Hence the petition is disposed off by holding that Misc.Civil Appeal No.29 of 2002 was not maintainable and that the Application at Exhibit 60 filed in RCS Suit No.1403 of 1985 was required to be allowed and is allowed but by levying costs quantified at Rs.5000/-. The plaintiffs may apply to withdraw the costs amount which will be deposited by the applicant within a period of two weeks from

today. in the trial Court. Trial of the suit is hereby expedited and it is directed that the suit be heard and decided by 31st December 2006.

(B.H.MARLAPALLE,J.)